

Template Conservation Easement
Virginia Outdoors Foundation

DRAFT
July 2003

Exempted from recordation tax
under the Code of Virginia (1950), as amended,
Sections 58.1-811 (A) (3), 58.1-811 (D) and 10.1-1803
and from Circuit Court Clerk's fee under Section 17.1-266

Tax Map No. _____

THIS DEED OF GIFT OF EASEMENT, made this _____ day of _____, 2003,
between _____, herein called (collectively) the "Grantor", the
VIRGINIA OUTDOORS FOUNDATION, an Agency of the COMMONWEALTH OF VIRGINIA,
herein called the "Grantee", whose address is 203 Governor Street, Suite 317, Richmond, VA. 23219
and, _____, herein called the Bank,
and _____, Trustees, herein called Trustees,

WITNESSETH:

WHEREAS, the Open Space Land Act of 1966 (Chapter 17, Title 10.1, §§10.1-1700 to 10.1-1705 of the Code of Virginia, as amended) declares that the preservation of open-space land serves a public purpose by promoting the health and welfare of the citizens of the Commonwealth by curbing urban sprawl and encouraging more desirable and economical development of natural resources, and authorizes the use of easements in gross to maintain the character of open-space land; and

WHEREAS, Chapter 18, Title 10.1 of the Code of Virginia (§§ 10.1-1800 to 10.1-1804, as amended) declares it to be the public policy of the Commonwealth to encourage preservation of open-space land and authorizes the Virginia Outdoors Foundation to hold real property or any estate or interest therein for the purpose of preserving the natural, scenic, historical, scientific, open-space and recreational lands of the Commonwealth; and

WHEREAS, the Grantor is the owner in fee simple of the real property hereinafter described, (the "Property") and desires the Property preserved as open-space land in the public interest; and

WHEREAS, (REFERENCE PARTICULAR SIGNIFICANT RESOURCES OR SPECIFIC ATTRIBUTES OF LAND)

WHEREAS, (REFERENCE PUBLIC POLICY PERTAINING TO THE CONSERVATION RESOURCES OF THE PARCEL(S))

WHEREAS, (INSERT OTHER STATUTORY REFERENCES OR REFERENCES TO CITY OR COUNTY PUBLIC LAND USE PLAN, IF APPLICABLE)

NOW, THEREFORE, in recognition of the foregoing and in consideration of the mutual covenants herein and the acceptance hereof by the Grantee, the Grantor does hereby grant and convey to the Grantee an open-space easement in gross over, and the right in perpetuity to restrict the use of, the real estate consisting of _____ acres described below/ or in SCHEDULE "A", located in _____ Magisterial District, _____ County, Virginia near _____, fronting on State Route _____, and hereinafter referred to as the "Property:"

_____(insert legal description)_____

The above-described tracts are shown as parcel _____ on Tax Map _____ among the land records of _____ County and total _____ acres in the aggregate. The Property shall be considered to be one parcel for the purposes of this easement, and the restrictions and covenants of this easement shall apply to the Property as a whole rather than to such individual parcels.

AND SUBJECT, HOWEVER, to the restriction that the Grantee may not transfer or convey the open-space easement herein conveyed to the Grantee unless the Grantee conditions such transfer or conveyance on the requirement that (1) all restrictions and conservation purposes set forth in the conveyance accomplished by this deed are to be continued in perpetuity, and (2) the transferee is an organization then qualifying as an eligible donee as defined by section 170(h)(3) of the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations promulgated there under.

Restrictions are hereby imposed on uses of the Property pursuant to the public policies set forth above. The acts which the Grantor covenants to do and not to do upon the Property, and the restrictions which the Grantee is hereby entitled to enforce, are and shall be as follows:

1. **TRASH.** Accumulation or dumping of trash, refuse, or junk is not permitted on the Property. This restriction shall not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting, or the storage of farm machinery, organic matter, agricultural products or agricultural byproducts on the Property, as long as such practices are conducted in accordance with applicable laws and regulations.
2. **SIGNS.** Display of billboards, signs, or other advertisements which are visible from outside the Property is not permitted on or over the Property except to state the name and/or address of the owners, to advertise the sale or lease of the Property, to advertise the sale of goods or services

produced incidentally to a permitted use of the Property or to provide notice necessary for the protection of the Property and for giving directions to visitors. No such sign shall exceed nine square feet in size.

- 3. DIVISION.** Division or subdivision of the Property in any manner is prohibited. (alternate: The Property shall not be divided or subdivided into more than _____ parcels. [See VOF Guidelines for variations based on size of Property.]

- 4. MANAGEMENT OF FOREST.** Management of forest resources, including commercial timber harvest, shall be in accord with a forest stewardship plan approved by the Grantee. Best Management Practices, as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any material forestry activity is undertaken. The Grantor shall notify the Grantee no later than 30 days prior to the start of any material forest activity as well as within 7 days of its completion. (Optional language: The primary objective(s) of the forest stewardship plan shall include (use one or two) management of woodlands to provide wildlife habitat, forest stand management to maintain the health of the forest, maintenance of a scenic forest, protection of rare or unique natural areas, management of timber for income, soil and water conservation, preservation of historical and cultural resources, etc.)

[VOF encourages the following provision for properties with perennial stream.]

- 4a. RIPARIAN BUFFER.** A forested buffer extending _____ feet (a minimum of thirty-five (35) feet) from each bank of _____ Creek shall be maintained. This buffer shall be protected from degradation by livestock. Removal of non-native invasive species and minimal harvest of trees is permitted, provided that the function of the buffer to protect water quality is not impaired.

(alternate: 4a. There shall be no ploughing, cultivation, or similar earth disturbing activity within _____ feet (a minimum of thirty-five (35) feet) of each bank of _____ Creek. [Optional additional language: this buffer shall be protected from degradation by livestock].

- 5. GRADING, BLASTING, MINING.** Grading, blasting or earth removal shall not materially alter the topography of the Property except for dam construction to create private ponds or lakes, or as required in the construction of permitted buildings, connecting private roads, and utilities as described in Paragraph 6. Generally accepted agricultural activities shall not constitute any such material alteration. Best Management Practices, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion and protect water quality in the construction of permitted private roads. Notwithstanding the foregoing, no grading, blasting, or earth removal is permitted on the Property if it will materially diminish or impair the conservation values protected by this Easement. Mining on the Property is prohibited.

- 6. BUILDINGS AND STRUCTURES.** No permanent or temporary building or structure shall be built or maintained on the Property other than:
- (i) a single family dwelling(s) and non-residential outbuildings or structures commonly and appropriately incidental thereto,

- (ii) _____ secondary dwellings not to exceed _____ (select square footage of 2,500 feet or less) square feet of livable space and non-residential outbuildings **or structures** commonly and appropriately incidental thereto, and
- (iii) farm buildings or structures, provided that farm buildings or structures exceeding 4,500 square feet in ground area [VOF staff will assess characteristics of the Property and work with landowner to determine an appropriate number between 4,500 and 10,000 square feet for farm building review threshold.] may not be constructed on the Property unless prior written approval for said building or structure is obtained in writing from Grantee, which approval shall be limited to consideration of the impact of the size, height and siting of the proposed structure on the conservation values of the Property; for the purposes of this subparagraph a farm building or structure shall refer to a building or structure originally constructed and used for the activities specified in paragraph 7(i);
- (iv) private roads and utilities that serve permitted buildings or structures may be constructed. In the event of subdivision of the Property as provided in Paragraph 3 above, permitted dwellings shall be allocated among the parcels in the instrument creating the subdivision, and private roads and utilities may be constructed on each parcel .

7. INDUSTRIAL OR COMMERCIAL ACTIVITIES. Industrial or commercial activities other than the following are prohibited: (i) agriculture, viticulture, aquaculture, silviculture, horticulture, and equine activities, (ii) temporary or seasonal outdoor activities that do not permanently alter the physical appearance of the Property, and that are consistent with the conservation values herein protected, (iii) activities that can be and in fact are conducted within permitted buildings without material alteration to the external appearance thereof. Temporary outdoor activities involving 100 or more people shall not exceed seven days in duration unless approved by the Grantee in advance in writing. *[Optional additional language pertaining to American Farm and Ranch Protection Act: Notwithstanding any other provision of this easement, no commercial recreational use (except for de minimis commercial recreational uses) shall be allowed on the Property, or Notwithstanding the foregoing, any commercial recreational use of the Property is permitted only to the extent such use would otherwise be permitted under Section 2031(c)(8)(B) of the Internal Revenue Code of 1986 as amended.]*

8. ENFORCEMENT. Representatives of the Grantee may enter the Property from time to time for purposes of inspection and enforcement of the terms of this easement after permission from or reasonable notice to the owner or the owner's representative. The Grantor hereby grants to the Grantee the right to bring an action at law or in equity to enforce the conservation restrictions contained herein, specifically including the right to require restoration of the Property to a condition of compliance with the terms of this easement, to recover any damages arising from non-compliance, and to enjoin non-compliance by ex parte temporary or permanent injunction. If the court determines that the Grantor failed to comply with this easement, the Grantor shall reimburse the Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorneys fees, in addition to any other payments ordered by such court. The Grantee does not waive or forfeit the right to take action as may be necessary to insure compliance with this easement by any prior failure to act and the Grantor hereby waives any defenses of waiver, estoppel or laches with respect to any failure to act by the Grantee.

9. NOTIFICATION OF TRANSFER. The Grantor shall notify the Grantee in writing within 60 days following any transfer or sale of the Property or any part thereof. In any deed conveying all or any part of the Property, this easement shall be referenced by Deed Book and Page Number or other appropriate reference.

10. EXTINGUISHMENT. The Grantor agrees that the donation of the perpetual conservation restriction in this easement gives rise to a property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction at the time of the gift bears to the value of the Property as a whole at that time. If a subsequent unexpected change in the conditions surrounding the Property makes impossible or impractical the continued use of the Property for the conservation purposes specified herein, the restrictions set forth in the easement can be extinguished only by judicial proceeding and only if such extinguishment also complies with the requirements of section 10.1-1704 of the Virginia Code. In any sale or exchange of the Property subsequent to such extinguishment, the Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of the perpetual conservation restriction computed as set out above, but not to be less than the proportionate value that the perpetual conservation restriction at the time of the extinguishment bears to the then value of the Property as a whole. The Grantee shall use all its share of the proceeds from the sale of such property in a manner consistent with the conservation purposes of this easement and of the Open-Space Land Act.

11. PARTIES TO EASEMENT: The covenants, terms, conditions and restrictions contained in this easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The terms "Grantor" and "Grantee" used herein shall include, respectively, the above-named Grantor and his/her personal representatives, heirs, successors and assigns, and the above-named Grantee and its successors and assigns.

If any provision of this easement or the application thereof to any person or circumstance is found to be invalid, the remaining provisions of this easement shall not be affected thereby.

(If applicable)

_____, herein, the Bank, is the Noteholder under a certain Deed of Trust dated _____ and recorded in the Clerk's Office of the Circuit Court of _____ County, Virginia in Deed Book _____ at Page _____, which subjects the Property to the Bank's lien. The Bank hereby consents to the terms and intent of this easement, and agrees that the lien represented by said Deed of Trust shall be held subject to this Deed of Gift of Easement and joins in the Deed to reflect its direction to the Trustee to execute this Deed to give effect to the subordination of such Deed of Trust to this Deed of Easement.

Although this easement in gross will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to or, use with respect to the Property. The Grantor hereby retains the exclusive right to such access and use, subject to the terms hereof.

The parties hereto agree and understand that any value of this donation claimed for tax purposes must be fully and accurately substantiated by an appraisal from a qualified appraiser as defined in IRS regulations (see section 1.170A-13(c)(5)), and that the appraisal is subject to review, audit and challenge by all appropriate tax authorities. The Virginia Outdoors Foundation makes no express or implied warranties regarding whether any tax benefits will be available to Grantor from donation of this easement, nor whether any such tax benefits might be transferable, nor whether there will be any market for any tax benefits which might be transferable.

Acceptance of this conveyance by the Grantee is authorized by section 10.1-1801 of the Code of Virginia and is evidenced by the signature of its Executive Director hereto.

WITNESS the following signatures and seals.

Grantor

Grantor

Bank:

By: _____

Its: _____

_____, Trustee

_____, Trustee

Accepted:

VIRGINIA OUTDOORS FOUNDATION,

By: _____

Tamara A. Vance, Executive Director

COMMONWEALTH OF VIRGINIA,

CITY/COUNTY OF _____, TO WIT:

I, _____, a Notary Public for the Commonwealth aforesaid, hereby certify that _____, Grantor, personally appeared before me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this _____ day of _____, 2003.

Notary Public

My commission expires: _____(SEAL)

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, TO WIT:

I, _____, a Notary Public for the Commonwealth
aforesaid, hereby certify that _____, Grantor, personally appeared before
me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this _____ day of _____, 2003.

Notary Public

My commission expires: _____(SEAL)

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, TO WIT:

I, _____, a Notary Public for the
Commonwealth aforesaid, hereby certify that Tamara A. Vance, Executive Director of the
Virginia Outdoors Foundation, personally appeared before me this day and acknowledged
the foregoing instrument on behalf of the Virginia Outdoors Foundation.

WITNESS my hand and official seal this _____ day of _____, 2003.

Notary Public

My commission expires: _____(SEAL)

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, TO WIT:

I, _____, a Notary Public for the Commonwealth
aforesaid, hereby certify that _____, as _____
of _____ personally appeared before me this day and
acknowledged the foregoing instrument.

WITNESS my hand and official seal this _____ day of _____, 2003.

Notary Public

My commission expires: _____(SEAL)

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, TO WIT:

I, _____, a Notary Public for the Commonwealth
aforesaid, hereby certify that _____, as Trustee, personally
appeared before me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this _____ day of _____, 2003.

Notary Public

My commission expires: _____(SEAL)

See addendums next pages for further suggested language.

ADDENDUM 1

Sample language for WHEREAS recitations

Scenic By-way:

WHEREAS, the property hereinafter described fronts on Va. State Route _____, a designated Virginia Scenic By-way, and contributes to the scenic views enjoyed by the public therefrom; and

Drinking Water Supply Watershed:

WHEREAS, the property hereinafter described lies along the _____ River, a principal tributary to the _____ Reservoir, a public water supply for the City of _____ and/or County of _____; and

Rural Historic District:

WHEREAS, the property hereinafter described lies within the _____ Rural Historic District, which is listed on the National Register of Historic Places (date) and the Virginia Landmarks Register (date); and

Next to other Easements:

WHEREAS, the property hereinafter described lies adjacent to land under open-space easement deeded to the Grantee and contributes to the open-space values of such land under easement; and

Agricultural/Forestal District:

WHEREAS, the property hereinafter described lies within the _____ Agricultural and Forestal District designated by the Board of Supervisors of _____ County, pursuant to the Virginia Agricultural and Forestal Districts Act (§§15.1 – 1506 et seq. of the Code of Virginia); and

Eligible for Scenic River Designation:

WHEREAS, the 1996 Virginia Outdoors Plan prepared by the Virginia Department of Conservation and Recreation lists the segment of the _____ River along which the hereinafter described property lies as potentially eligible for State Scenic River designation; and

State Critical Environmental Area:

WHEREAS, the property hereinafter described lies within the _____ area, which was identified in the Virginia Critical Environmental Areas Study (1972), conducted by the Virginia Division of State Planning and Community Affairs, as a critical environmental area containing all five of the surveyed criteria, said area being of unusual natural features worthy of protection by State or local governments, crucial to an ecological system, presently endangered, appropriate for public use, and containing a primary State resource; and

County Comprehensive Plan:

WHEREAS, the preservation of the property hereinafter described will further the _____ County Comprehensive Plan's goal to _____; and

WHEREAS, the property hereinafter described is located within an area which is designated as _____ in the _____ County Comprehensive Plan; and

ADDENDUM 2:

Language for protection of special resources on individual properties

Building setback from scenic roads, rivers or historic resources:

No building or structure may be constructed within _____ feet of the centerline of State Route _____. (or, within _____ feet of the bank of the _____ River). This prohibition shall not apply to the construction or maintenance of fencing, livestock feeding or watering troughs, mailboxes, gate posts, or permitted signs, or to the repair or replacement of any buildings or structures existing as of the date of this Deed of Gift of Easement.

Ridge or mountaintop protection:

No building or structure may be built above the _____ foot elevation contour line as shown on the _____ quadrangle map prepared by the U.S. Geological Survey.

Viewshed protection for Park, Trail or other public access property:

Buildings or structures visible from _____ shall be designed and sited to minimize their visibility from said location(s) in any season of the year.

Boundary line adjustment between parcels

Boundary line adjustments with adjoining parcels of land are permitted and shall not be considered a prohibited division of the Property, provided that the Grantee is notified in writing prior to the completion of any such boundary line adjustment and at least one of the following conditions is met:

- 1) The entire adjacent parcel is subject to an existing, recorded open-space easement conveyed to the Grantee;
- 2) The proposed boundary line adjustment is reviewed and approved in advance by the Board of Trustees of the Grantee.